

### REMARKS

The Office Action mailed September 10, 2007 has been received and reviewed. Claims 1-22 are in the case. Claims 23-46 have been withdrawn from consideration. Claims 1-22 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-22 stand rejected under 35 U.S.C. § 102(b).

By this paper, claims 1, 3-5, and 13 have been amended, claims 23-46 have been cancelled, and claims 47-61 have been added. For the reasons set forth below, claims 1-22 and 47-61 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks is, therefore, respectfully requested.

#### **Rejection of Claims 1-22 Under 35 U.S.C. 112, Second Paragraph**

Claims 1-22 stand rejection under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. By this paper, claims 1, 3-5, and 13 are amended to more clearly point out and distinctly claim the invention. Reconsideration is, therefore, respectfully requested.

#### **Rejection of Claims 1-3, 5-6, 10-13, and 15-21 Under 35 U.S.C. §102(b)**

Claims 1-3, 5-6, 10-13, and 15-21 stand rejected under 35 U.S.C. §102(b) as being anticipated by Dairy Science and Technology Handbook (DSTH). However, for a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. See MPEP §2131. Moreover, those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. *Id.* With respect to Applicant's newly amended claims, DSTH does not meet this test.

Specifically, Applicant does not find in DSTH any disclosure of a beverage that is capable of creating physical dependence in a user, as required by Applicant's claims. Rather, Applicant finds that DSTH discloses milk. Applicant does not find in DSTH any disclosure that milk is capable of creating physical dependence. Accordingly, reconsideration is respectfully requested.

**Rejection of Claims 1-3, 5-7, 10-13, and 15-21 Under 35 U.S.C. §102(b)**

Claims 1-3, 5-7, 10-13, and 15-21 stand rejected under 35 U.S.C. §102(b) as being anticipated by Handbook of Milk Composition (HMC). However, for a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. *See* MPEP §2131. Moreover, those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. *Id.* With respect to Applicant's newly amended claims, HMC does not meet this test.

Specifically, Applicant does not find in HMC any disclosure of a beverage that is capable of creating physical dependence in a user, as required by Applicant's claims. Rather, as with DSTH, Applicant finds that HMC discloses milk. Applicant does not find in HMC any disclosure that milk is capable of creating physical dependence. Accordingly, reconsideration is respectfully requested.

**Rejection of Claims 1-22 Under 35 U.S.C. §102(b)**

Claims 1-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by Van de Hoven. However, for a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. *See* MPEP §2131. Moreover, those

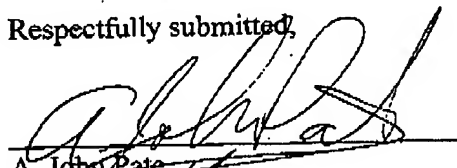
elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. *Id.* With respect to Applicant's newly amended claims, Van de Hoven does not meet this test.

Specifically, Applicant's newly amended claims recite a nondairy composition. Applicant finds that Van de Hoven discloses a beverage containing soured milk. Accordingly, the composition of Van de Hoven is not nondairy. Accordingly, reconsideration is respectfully requested.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 14<sup>th</sup> day of November, 2007.

Respectfully submitted,



A. John Pate  
Reg. No. 36,234  
Attorney for Applicant

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PATE PIERCE & BAIRD  
175 South Main Street, Suite 1250  
Salt Lake City, Utah 84111  
Telephone: (801) 530-0330  
Facsimile: (801) 530-5955

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